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CAMPOS, and DIAZ

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OMAR ARNOLDO RIVERA  
MARTINEZ; ISAAC ANTONIO  
LOPEZ CASTILLO; JOSUE  
VLADIMIR CORTEZ DIAZ; JOSUE  
MATEO LEMUS CAMPOS;  
MARVIN JOSUE GRANDE  
RODRIGUEZ; ALEXANDER  
ANTONIO BURGOS MEJIA; LUIS  
PENA GARCIA; JULIO CESAR  
BARAHONA CORNEJO, as  
individuals,

Plaintiffs,

v.

THE GEO GROUP, Inc., a Florida  
corporation; the CITY OF  
ADELANTO, a municipal entity; GEO  
LIEUTENANT DIAZ, sued in her  
individual capacity; GEO  
SERGEANT CAMPOS, sued in his  
individual capacity; SARAH JONES,  
sued in her individual capacity; THE  
UNITED STATES OF AMERICA;  
CORRECT CARE SOLUTIONS,  
INC.; and DOES 1-10, individuals,

Defendants.

Case No. 5:18-cv-01125-SP

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION IN  
LIMINE NO. 2 TO EXCLUDE  
EVIDENCE RELATED TO  
PLAINTIFFS' IMMIGRATION  
BACKGROUNDS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

*[Declaration of Carmen M. Aguado and  
[Proposed] Order filed concurrently  
herewith]*

Pretrial Conference: January 21, 2020  
Time: 10:00 a.m.  
Courtroom: 3  
Judge: Hon. Sheri Pym

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 21, 2020, at 10:00 a.m., or as  
 3 soon thereafter as this matter may be heard in Courtroom 3 of the above-captioned  
 4 Court, located at 3470 Twelfth Street, Riverside, CA 92501-3000, Defendants THE  
 5 GEO GROUP, INC. ("GEO"), CITY OF ADELANTO ("City"), CAMPOS, and  
 6 DIAZ will move this Court for an Order excluding regarding Plaintiffs' alleged  
 7 biographical backgrounds, including the allegations within their operative  
 8 complaint concerning the alleged reason(s) Plaintiffs left their home countries, their  
 9 harrowing journeys from their home countries to the United States, their alleged  
 10 status as asylum seekers, and their current immigration status. This testimony is  
 11 unduly prejudicial and has no probative value, and is designed only to elicit juror  
 12 sympathy and should therefore be excluded. Fed. R. Evid. 402-404.

13 The Motion is based upon the Notice of Motion, the attached Memorandum  
 14 of Points and Authorities, the pleadings, records and files in this action, and such  
 15 other matters as may properly come before the Court.

16 This motion is made following an attempt to meet and confer with Plaintiff's  
 17 counsel pursuant to Local Rule 7-3. Decl. of Carmen M. Aguado ("Aguado Decl.")  
 18 at ¶ 8.

19 Dated: December 31, 2019

BURKE, WILLIAMS & SORESENSEN, LLP

21 By: /s/ Carmen M. Aguado  
 22 Susan E. Coleman  
 23 Carmen M. Aguado

24 Attorneys for Defendants  
 25 THE GEO GROUP, INC., CITY OF  
 26 ADELANTO, CAMPOS, and DIAZ

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

Plaintiffs are eight (8) civil detainees that were detained at the Adelanto ICE Processing Detention Facility (“Facility”) in June 2017.<sup>1</sup> On June 12, 2017, Plaintiffs began what they claim was the start of a hunger strike (however, it is unclear whether any GEO personnel understood their intent) in the dayroom of their dorm. Plaintiffs chose to participate in the strike during a critical period of time at the Facility that required all detainees to be at their beds for count. If the count is not completed within a specified time period, the entire Facility is placed in an emergency state. Despite numerous commands to return to their bunks, and warnings that OC spray may be used to compel their compliance, Plaintiffs refused to comply and instead remained in the dayroom to bring attention to their grievances. Their noncompliance not only caused a major disruption in the dorm, but it threatened to disrupt the entire Facility as they were delaying count. As a result of their noncompliance, and the major disturbance that resulted from their conduct, Defendants Lt. Diaz and Sgt. Campos (“Defendants”), former employees of Defendant GEO, deployed short bursts of OC spray (3 in total).

Through this Motion in Limine No. 2, Defendants move to exclude Plaintiffs from referencing their alleged biographical backgrounds, including the allegations within their operative complaint concerning the alleged reason(s) Plaintiffs left their home countries, their journeys from their home countries to the United States, their alleged status as asylum seekers, and their current immigration status. Defendants anticipate Plaintiffs will attempt to introduce the aforementioned evidence in an effort to garner sympathy from the jury and distract jurors from the critical elements of the case. However, such evidence is irrelevant and unduly prejudicial in relation

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<sup>1</sup> In May 2011, GEO entered into contract with U.S. Immigration & Customs Enforcement (ICE) for the detention and care of immigrant detainees at the Facility, which houses immigrant detainees, through an intergovernmental service agreement with the City, which owns the property.

1 to its minimal probative value, would create an undue consumption of time, and is  
2 inadmissible under Federal Rules of Evidence 403.

### 3 **II. STANDARD FOR MOTIONS IN LIMINE.**

4 A motion in limine is a procedural device to obtain an early and preliminary  
5 ruling on the admissibility of evidence. *Goodman v. Las Vegas Metro. Police Dep't*,  
6 963 F. Supp. 2d 1036, 1046-47 (D. Nev. 2013). Although the Federal Rules of  
7 Evidence do not explicitly authorize a motion in limine, the Supreme Court has  
8 held that trial judges are authorized to rule on motions in limine pursuant to their  
9 authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n. 4, 105 S.Ct.  
10 460, 83 L.Ed.2d 443 (1984). A motion in limine is a request for the court's  
11 guidance concerning an evidentiary question. *See Wilson v. Williams*, 182 F.3d 562,  
12 570 (7th Cir. 1999).

### 13 **III. STATEMENT OF PERTINENT FACTS.**

#### 14 **A. Plaintiffs' Testimony Concerning The Allegations In Their Operative** 15 **Complaint.**

16 Plaintiffs' operative complaint includes boilerplate allegations that Plaintiffs  
17 "were forced to flee their home countries after becoming the targets of violent  
18 criminal organization" and that their "[l]oved ones were kidnapped and murdered in  
19 their home countries...." *See* Doc. # 95 at 3:17-4:17. During the depositions of  
20 Plaintiffs, select plaintiffs provided additional details regarding the reasons they  
21 immigrated to the United States; however, Plaintiffs Campos and Garcia were  
22 instructed by their counsel to not respond to questions concerning their  
23 backgrounds on the basis that it might impact their pending immigration cases. In  
24 contrast, Plaintiff Mejia provided testimony that was directly in conflict with the  
25 allegations in his operative complaint. For example, Plaintiff Mejia testified that his  
26 immediate family members were not kidnapped or murdered, nor did they have  
27 their lives threatened. Aguado Decl. at ¶ 3, Ex. "A" [Mejia Dep.].

28 ///



1           Additionally, Plaintiff Campos claimed that the lives of his parents and  
 2           siblings were threatened but was thereafter instructed not to answer “questions  
 3           about [his] immigration case and the factual background of his immigration case,”  
 4           including the facts underlying the alleged threats made to his family on the basis of  
 5           privacy and because it might impact his immigration case. Aguado Decl. at ¶ 4, Ex.  
 6           “B” [Mejia Dep.]. When asked why he came to the United States, his attorney  
 7           instructed him not to respond. *Id.* at 25:20-26:16 (“Q How many personal reasons  
 8           did you have for coming to the U.S.? MS. FLYNN: Objection. Vague. Asked and  
 9           answered. Instruct him not to answer.”) When defense counsel inquired as to why  
 10          Mr. Campos could not answer specific questions regarding the allegations in his  
 11          operative complaint, and whether Plaintiffs’ counsel intended to discuss these  
 12          issues at trial, counsel for Mr. Campos stated she understood the case was “about  
 13          what happened at Adelanto” and that Mr. Campos was not going to testify as to  
 14          why he came to the U.S. or the reasons that he left his home country. *Id.*

15          Likewise, during the deposition of Plaintiff Garcia, Plaintiffs’ counsel stated  
 16          that Plaintiff Garcia would not “get into the facts of his asylum case on the basis of  
 17          the advice of his immigration attorney,” which includes information concerning  
 18          why he immigrated to the U.S. Aguado Decl. at ¶ 5, Ex. “C” [Garcia Dep.].

19           **B. Plaintiffs’ Counsel Also Seeks To Exclude Select Biographical**  
 20           **Information Concerning Plaintiffs.**

21          When the parties met and conferred concerning their proposed motions in  
 22          limine, Plaintiffs’ counsel indicated that they likewise intend to seek to exclude  
 23          references to Plaintiffs biographical information on the same basis as Defendants –  
 24          that the information is irrelevant and unduly prejudicial. For example, Plaintiffs  
 25          planned to request to exclude references to Plaintiff Omar Martinez’s military  
 26          background and criminal history.<sup>2</sup> *See* Doc. #148 [Plaintiffs’ MIL]; *see also*

27           \_\_\_\_\_  
 28          <sup>2</sup> Defendants intend to oppose Plaintiffs’ motion in limine to exclude Plaintiff Omar  
 Martinez’s criminal history, as this information is relevant to his credibility.

1 Aguado Decl. at ¶ 6, Ex. “D” [Correspondence]. Similarly, Plaintiffs intended to  
 2 move to exclude the fact that Plaintiffs entered the United States unlawfully and  
 3 without inspection, that they were the subjects of deportation, and all similar  
 4 “underlying concepts” on the basis that they are “irrelevant to this case.” Aguado  
 5 Decl. at ¶ 6, Ex. “D” [Correspondence]

6 Despite arguing that Plaintiffs’ biographical information concerning their  
 7 immigration status was confidential during depositions and that the facts  
 8 concerning their entry to the United States was irrelevant to the case, Plaintiffs’  
 9 counsel has cherry-picked select “facts” concerning Plaintiffs’ backgrounds that are  
 10 allegedly relevant including, but not limited to, Plaintiffs’ alleged status as asylum  
 11 seekers and details about why they came to America. Plaintiffs cannot seek to  
 12 introduce the facts they believe the jury may be sympathetic to while  
 13 simultaneously seeking to exclude the facts that may be unfavorable or unpopular.

14 **C. Plaintiffs’ Counsel Acknowledged That The Background Evidence Is**  
 15 **Not Relevant To The Underlying Claims.**

16 When defense counsel met and conferred with Plaintiffs’ counsel concerning  
 17 this instant motion in limine, defense counsel suggested that the parties use terms  
 18 that were not inflammatory or prejudicial (such as illegal entry, deportation, etc.)  
 19 and, instead, simply state the undisputed facts that Plaintiffs entered the country and  
 20 were detained at the Facility. In response, Plaintiffs’ counsel stated:

21 “After much deliberation, Plaintiffs cannot think of a blanket way of  
 22 describing or limiting the information Plaintiffs intend to present about  
 23 Plaintiffs’ asylum claims that would apply to each Plaintiff. However, we can  
 24 tell you that we do not intend to dwell on the claims at length, *but will just ask questions about plaintiffs’ background and just enough factual context to understand who the plaintiffs are and why they came to this country.*”

25  
 26 However, in compliance with F.R.E., Defendants would use only the fact that  
 27 Martinez has a felony conviction, without getting into the nature of his felony or  
 28 felonies – unless the door is opened to those details. Defendants have agreed to not  
 reference Plaintiff Martinez’s military background because, as demonstrated herein  
 and acknowledged by Plaintiffs’ counsel, such information is irrelevant.

1 Aguado Decl. at ¶ 7, Ex. “E” [Correspondence]. However, “who the plaintiffs are”  
 2 and “why they came to this country” have no bearing on determining liability in  
 3 this case.<sup>3</sup>

4 **IV. EVIDENCE OF PLAINTIFFS’ BACKGROUNDS IS PROPERLY**  
 5 **EXCLUDED.**

6 Plaintiffs’ alleged biographical information is irrelevant and would  
 7 nonetheless be highly prejudicial as compared to any marginal relevance when  
 8 balanced under Rule 403. *See* Fed. R. Evid. 401 (relevance), 403 (balancing  
 9 inquiry). Namely, Federal Rule of Evidence 401 defines “relevant evidence” as  
 10 “evidence having any tendency to make the existence of any fact that is of  
 11 consequence to the determination of the action more probable or less probable than  
 12 it would be without the evidence.” Rule 402 provides that “all relevant evidence is  
 13 admissible.” Furthermore, Rule 403 provides in pertinent part: “Although relevant,  
 14 evidence may be excluded if its probative value is substantially outweighed by the  
 15 danger of unfair prejudice, confusion of the issues, or misleading the jury, or by  
 16 considerations of undue delay, waste of time, or a needless presentation of  
 17 cumulative evidence.”

18 “Unfair” in this context means the evidence has an undue tendency to suggest  
 19 a jury decision based upon an improper basis, typically based upon emotion. *U.S. v.*  
 20 *Young*, 754 F.Supp. 739, 742 (D.S.D. 1990). Additionally, where evidence is not  
 21 closely related to the issue being charged and is otherwise irrelevant, the probative  
 22 value of such evidence is substantially outweighed by the significant danger of  
 23 unfair prejudice. *United States v. Guerrero*, 756 F.2d 1342, 1348 (9th Cir. 1984);

24  
 25 <sup>3</sup> For example, whether Plaintiff Campos is a refugee or asylum seeker – or whether  
 26 he illegally crossed the border - has no bearing on whether GEO is vicariously  
 27 liable for the alleged battery that took place during the incident. Similarly, whether  
 28 Plaintiff Mejia left his home country because his family was threatened does not  
 establish any element of Plaintiffs’ claim under Civil Code section 52.1. The same  
 analysis applies to all of Plaintiffs’ legal theories. None require information about  
 why Plaintiffs chose to immigrate.

1 *U.S. v. Black*, 20 F.3d 1458, 1464 (9th Cir. 1994).

2 Here, information concerning Plaintiffs' biographical backgrounds, including  
3 the allegations within their operative complaint concerning the alleged reason(s)  
4 Plaintiffs left their home countries, their journeys from their home countries to the  
5 United States, their alleged status as asylum seekers, and their current immigration  
6 status is of no consequence to the determination of any issue in this action – which  
7 Plaintiffs' counsel acknowledges. As such the information is irrelevant and properly  
8 excluded. Fed. R. Evid. 401, 402. Even if the information were relevant, which it is  
9 not - as Plaintiffs counsel has admitted it would merely be introduced to describe  
10 “who the plaintiffs are” and “why they came to this country” - its probative value is  
11 substantially outweighed by the danger of unfair prejudice, confusion of the issues,  
12 or misleading the jury. Plaintiffs' intent to cherry-pick information concerning their  
13 backgrounds highlights that the information they seek to introduce is prejudicial  
14 and intended solely for the purpose of casting Plaintiffs in a more sympathetic light  
15 to the jury for reasons unrelated to the claims in this case.

16 Additionally, as demonstrated above, Plaintiffs Garcia and Campos were  
17 instructed to not answer questions during their depositions regarding their  
18 immigration status and backgrounds on the basis that the information was private  
19 and consequential to their pending immigration cases despite the information being  
20 referenced in their operative complaint.<sup>4</sup> Defense counsel was, thus, unable to  
21 question them to determine the underlying facts which support their conclusory  
22 allegations or, even, determine if the allegations are true. Plaintiffs should not be  
23 permitted to benefit from the double standard that they created and unfairly surprise  
24 Defendants at trial with new information that was deemed confidential and  
25 irrelevant during discovery.

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<sup>4</sup> Plaintiffs' counsel has not provided an explanation as to why the information is now properly disclosed.



1     **V. CONCLUSION.**

2             For the foregoing reasons, Defendants respectfully request that this Court  
3     grant Defendants' Motion in Limine No. 2 to exclude Plaintiffs' alleged  
4     biographical background information, including the allegations within their  
5     operative complaint concerning the alleged reason(s) Plaintiffs left their home  
6     countries, their journeys from their home countries to the United States, their  
7     alleged status as asylum seekers, and their current immigration status.

8  
9     Dated: December 31, 2019

BURKE, WILLIAMS & SORESENSEN, LLP

10  
11             By: /s/ Carmen M. Aguado  
12                 Susan E. Coleman  
                Carmen M. Aguado

13             Attorneys for Defendants  
14             THE GEO GROUP, INC., CITY OF  
              ADELANTO, CAMPOS, and DIAZ